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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,180	05/14/2001	Lavada Campbell Boggs	KCC-14,485	8191
35844	7590	06/10/2004	EXAMINER	
PAULEY PETERSEN KINNE & ERICKSON 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195			REICHLER, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/855,180	Applicant(s) BOGGS ET AL.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-58 is/are pending in the application.
- 4a) Of the above claim(s) 9-11, 13, 14, 20-24 and 28-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12, 15-19 and 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 5-14-01 & 10-14-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 9-11, 13-14, 20-24 and 28-58 remain withdrawn from further consideration.

Claim Language Interpretation

2. Various claim terms have been defined on page 6, line 4-page 14, line 21. All other terminology will be given its common meaning, i.e. dictionary definition. For example, “opposite” is defined as “placed or located directly across from something else or each other; opposite sides of a building”. It is noted that the language “targeted elastic laminate” as defined on the pages cited supra and used in claims 2-3 and 26 defines a product by process, see MPEP 2113, (i.e. even though product by process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process). It is further noted that the end product claimed is a garment not a targeted elastic material, i.e. if a garment of the prior art is the same as the end product in the claims, the claims are unpatentable even though it was not made in a single manufacturing process but rather through separate manufacture and subsequent connection. “Joined” and “bonded” are defined as commonly used, i.e. include direct or indirect joining or bonding. See also Response to Arguments section below. “Layer” is defined as commonly used, i.e. “One thickness, course or fold laid or lying over or under another”.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-5, 12, 15-19 and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by 3M, PCT '264.

See Figures, esp. Figures 5, 8 and 14, page 4, line 15-page 5, line 3, page 7, lines 6-23, page 11, lines 19-31, page 16, lines 24 et seq, page 17, lines 1-7, page 21, line 22-page 24, line 14, and page 27, lines 24-26 of 3M, i.e. the high tension/low stretch zone is adjacent edge 74 while the low tension/high stretch zone is in the midportion as seen in Figure 14, the first facing layer is 76. As best understood of the instant specification at page 2, last paragraph, page 3, lines 8-14 as amended, the definitions on page 7, lines 9-17, and the manufacturing processes of Figures 9-12 and 16, the device as set forth by 3M is made in a single manufacturing process. With regard to the limitation added to claims 1 and 25, Applicant claims a barrier layer having a first surface facing an inner surface of the garment and a second surface opposite the first surface facing an outer surface of the garment and at least one second filament joining the first surface and another second filament joining the second surface. It is noted that the claims do not require that the filaments be directly joined to the respective surfaces of the barrier layer, see the Claim Language Interpretation section supra. Therefore since 3M shows a barrier layer 72 having two opposite inner and outer surfaces with at least one second filament directly joined to an inner surface and another second filament indirectly joined to the outer surface such meets the claim language. See also the Response to Arguments section infra. The reference teaches a device

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which functions as set forth in claims 12, 15-16 and 19, see page 1, lines 8-9 of 3M. In claims 17-18, Applicant claims the device being swimwear or a feminine hygiene article which capability or function the reference does not explicitly teach. However, the 3M patent teaches all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the same structure of the 3M device would also be capable inherently of the same properties and functions of such claimed structure. See MPEP 2112.01.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 6 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over 3M '264 in view of Kimberly Clark EP '550.

Applicant claims a second facing layer bonded to a second side of the zones, i.e. the first facing layer is attached to a first side of the zones. See Figure 14, element 72, page 23, lines 14-19 and page 6, lines 7 et seq of 3M, i.e. the zones have a barrier or backsheet on one side and a facing layer on the other. See KC '550 at page 4, lines 40-55, i.e. interchangeability of a two ply barrier for a one ply barrier. To make the one ply film barrier of 3M a two ply, inner film ply/outer ply nonwoven web barrier instead would be obvious to one of ordinary skill in the art in view of the recognition of the interchangeability as taught by KC '550. In so doing the outer ply would be a second facing layer on the second side of the zones.

Response to Arguments

7. Applicants remarks with respect to the prior art on pages 12-14 have been considered but are deemed narrower than the claim language in that “joined to” does not have to be interpreted as “directly joined to”. As pointed out in the Claim Language Interpretation section and the prior art rejection “joined” can include direct or indirect joining. It should be noted that to interpret “joining” otherwise would mean that the added matter to claims 1 and 25 is new matter with regard to claims 2, 6 and 26-27 since Figure 7, for example, which teaches a barrier layer inserted between filaments in a low tension and/or high stretch zone with a first facing layer bonded directly to the said one filament and indirectly bonded to said another filament and a second facing layer bonded indirectly to the said one filament and directly bonded to said another filament does not teach each facing directly bonded to all the second filaments. It is noted that “bond” is defined as “To join securely, as with glue or cement” by the dictionary. Therefore, it would be inconsistent to interpret “joining” as meaning “directly joining” but interpret “bonding” as meaning “indirectly or directly bonding”. Even if “direct joining language were added to the claims, Applicants attention is directed to PCT ‘215, already of record, to Figures 6-8 and page 24, second full paragraph, for example.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the language added to the independent claims 1 and 25.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR

June 7, 2004